

SENATE BILL 3392

By Tate

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 1, Part 1; Title 37, Chapter 2, Part 4 and Title 47, Chapter 50, Part 1, relative to foster care, adoption and termination of parental rights.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-102(1), is amended by deleting the current subdivisions (D) and (E) in their entirety and by substituting instead the following:

(D) For purposes of this subdivision (1), “willfully failed to support” or “willfully failed to make reasonable payments toward such child's support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child. If, after an evidentiary hearing, the trier of fact reasonably finds based on the totality of the circumstances that a person who has attempted to support a child has been deterred by the acts of others or by circumstances beyond that person’s control from supporting that child, then the court shall find that such person has not willfully failed to support that child;

(E) For purposes of this subdivision (1), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. If, after an evidentiary hearing, the trier of fact reasonably finds based on the totality of the circumstances that a person who has attempted to visit a child has been deterred by the acts of others or by circumstances beyond that person’s control from visiting that child, then the court shall find that such person has not willfully failed to visit that child;

SECTION 2. Tennessee Code Annotated, Section 36-1-113(q), is amended by deleting the current language in its entirety and by substituting instead the following:

(q) After the entry of the order terminating parental rights, no party to the proceeding, nor anyone claiming under such party, may later question the validity of the termination proceeding by reason of any defect or irregularity therein, jurisdictional or otherwise, but shall be fully bound thereby, except based upon the timely filing of an appeal of the termination order as may be allowed by law; and in no event, for any reason, shall a termination of parental rights be overturned by any court or collaterally attacked by any person or entity after one (1) year from the date of the entry of the final order of termination except pursuant to such an appeal. This provision is intended as a statute of repose.

SECTION 3. Tennessee Code Annotated, Section 37-2-402(10), is amended by deleting the current subdivisions (D) and (E) in their entirety and by substituting instead the following:

(D) For purposes of this subdivision (10), “willfully failed to support” or “willfully failed to make reasonable payments toward such child's support” means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child. If, after an evidentiary hearing, the trier of fact reasonably finds based on the totality of the circumstances that a person who has attempted to support a child has been deterred by the acts of others or by circumstances beyond that person’s control from supporting that child, then the court shall find that such person has not willfully failed to support that child;

(E) For purposes of this subdivision (10), “willfully failed to visit” means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation. If, after an evidentiary hearing, the trier of fact reasonably finds based on the totality of the circumstances that a person who has attempted to visit a child has been

deterred by the acts of others or by circumstances beyond that person's control from visiting that child, then the court shall find that such person has not willfully failed to visit that child;

SECTION 4. Tennessee Code Annotated, Section 36-1-117, is amended by adding the following new subdivision (3) to subsection (a):

(3) Prior to hearing an action for termination of parental rights, the court shall ascertain whether or not the parent has limited English proficiency and to what extent the parent or parents against whom the action is filed understand the proceeding filed against them. If the court determines that the parent has limited English proficiency and the parent does not understand the nature of the proceeding because of language barriers, the parent or parents shall be provided a court interpreter, who shall be present during the entire proceeding for the purpose of translation to the native language, pursuant to supreme court rule 41. If the parent or parents are indigent, then costs for the interpreter shall be paid pursuant to supreme court rule 13.

SECTION 5. This act shall take effect July 1, 2008, the public welfare requiring it.